

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-12 (rev. 9), “EQUAL EMPLOYMENT OPPORTUNITY”
NOVEMBER 1, 2013
TABLE OF CONTENTS

<u>SECTION</u>	PAGE NUMBER
<u>AUTHORITY</u>	1
<u>APPLICABILITY</u>	1
<u>EMPLOYMENT AT WILL CLAUSE</u>	1
<u>POLICY STATEMENT</u>	1
<u>DEFINITIONS</u>	2
<u>DISCUSSION</u>	2
<u>PROCEDURES</u>	
I. Support by TDCJ Management and Supervisors.....	3
II. Workforce Analysis and Recruitment Plan.....	3
III. Training.....	4



TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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SUPERSEDES: PD-12 (rev. 8)
January 1, 2010

EXECUTIVE DIRECTIVE

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY

AUTHORITY: Tex. Gov't Code § 493.007; Title VII, *Civil Rights Act of 1964*, as amended, 42 U.S.C. § 2000e; *Americans with Disabilities Act (ADA)* of 1990, 42 U.S.C. § 12101; *Equal Pay Act of 1963*, 29 U.S.C. § 206(d); *Age Discrimination in Employment Act (ADEA)*, as amended, 29 U.S.C. § 621; Tex. Lab. Code §§ 21.001-.556, 301.151-.156; Executive Order 11246; and Board Policy 02.43.

Reference: American Correctional Association (ACA) Standard 4-4053

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the executive director's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the TDCJ and **do not** create any legally enforceable interest or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

No applicant or employee of the TDCJ shall be discriminated against because of race, color, religion, sex (gender), national origin, age, disability, or genetic information.

DEFINITIONS:

"Applicant" is a person who is seeking consideration for a position within the TDCJ by way of interagency transfer, employment, or re-employment from outside the TDCJ.

“Artificial Barriers” are requirements, procedures, or standards for employment that are not related to successful performance on the job.

“Discrimination” is unequal treatment of persons based on sex (gender), including sexual harassment, race, color, religion, national origin, age (40 or above), disability, or genetic information. Discrimination by employers falls into four general areas: (1) hiring and firing, such as failing or refusing to hire or discharging; (2) employment conditions, such as compensation, terms, conditions, or privileges; (3) segregation and classification, such as limiting, segregating, or classifying employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual’s status as an employee; and (4) training programs.

“Equal Employment Opportunity Commission” (EEOC) is the federal agency that enforces federal laws prohibiting discrimination in employment or retaliation. The EEOC is separate from the TDCJ’s Employee Relations.

“Retaliation,” for the purpose of this directive, is an action that may deter a reasonable person from filing a complaint, participating in a proceeding regarding, or otherwise opposing an alleged EEO rule violation, or for associating with the applicant, employee, or other individual who is involved in such an activity.

“Texas Workforce Commission, Civil Rights Division” (TWC-CRD) is the state agency charged with: (1) enforcement of state laws prohibiting discrimination in employment or retaliation; and (2) investigating alleged violations of such laws.

DISCUSSION:

The TDCJ is committed to ensuring that all applicants and employees are treated fairly and equitably in all matters affecting employment with the TDCJ. The TDCJ is also committed to providing a work environment free of all forms of employment discrimination and recruiting a diverse TDCJ workforce.

Decisions relating to recruiting, hiring, position transfers, and promotions shall be based solely on an individual’s qualifications and ability to perform the essential functions of the position. The TDCJ shall not tolerate any artificial barriers denying applicants or employees equal opportunity in any phase of these employment-related processes.

All other TDCJ practices shall be administered without regard to race, religion, color, national origin, sex (gender), age, disability, or genetic information. Such practices include, but are not limited to, events and activities sponsored by the TDCJ, the provision of benefits and compensation, disciplinary actions, grievance intake and response, shift or job assignments, shift transfer requests, and training and staff development opportunities.

If an applicant or employee believes they have been discriminated against based on race, color, sex (gender), religion, national origin, age (40 or above), disability, or genetic information, or subjected to retaliation, the applicant or employee may pursue a complaint in accordance with

the guidelines in PD-31, "Discrimination in the Workplace." If an applicant or employee believes they have been sexually harassed, which is a form of gender discrimination, the applicant or employee may pursue a complaint in accordance with the procedures in PD-13, "Sexual Harassment and Discourteous Conduct of a Sexual Nature." No applicant or employee shall be impeded in any manner from filing a complaint of employment discrimination with the TDCJ's Employee Relations, Human Resources Division; the TWC-CRD; or the EEOC; or be subjected to harassment or retaliation for opposing alleged unlawful employment practices.

Any employee found to be in violation of this directive may be subject to disciplinary action, up to and including separation from employment, in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

PROCEDURES:

The following procedures reflect the TDCJ's commitment to the letter and spirit of the law guaranteeing equal employment opportunity.

I. Support by TDCJ Management and Supervisors

The deputy executive director, division directors, wardens, department heads, and all other supervisors within the TDCJ are responsible for observing and supporting the TDCJ's equal employment opportunity policy to ensure that all applicants and employees are treated in a non-discriminatory manner.

II. Workforce Analysis and Recruitment Plan

- A. Each state fiscal biennium, the TDCJ shall analyze its current workforce and compare the number of African Americans, Hispanic Americans, and females employed by the TDCJ in each job category to the available African Americans, Hispanic Americans, and females in the statewide civilian workforce to determine the percentage of exclusion or underutilization by each job category.
- B. The TDCJ shall develop and implement a plan to recruit qualified African Americans, Hispanic Americans, and females:
 - 1. If the workforce availability analysis demonstrates the exclusion or underutilization of African Americans, Hispanic Americans, and females; or
 - 2. Based on:
 - a. Court-ordered remedies;

- b. Supervised conciliations; or
 - c. Settlement agreements.
3. The plan shall comply with the requirements of Texas Labor Code sections 21.001-.556.

III. Training

Employees shall receive training regarding TDCJ policies and procedures prohibiting employment discrimination through the Standard or Supplemental Employment Discrimination Training conducted in accordance with the guidelines in PD-97, "Training and Staff Development." Employees participating in such training shall also be informed of the federal and state agencies responsible for enforcing equal employment opportunity laws.

Brad Livingston
Executive Director